

**Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks
Office of the Director**

Statutory/Regulatory Interpretive Memorandum

DATE: March 19, 2002

TO: All UST Division Staff

FROM: Wayne Gregory

SUBJECT: Use of the Term “Responsible Party”

QUESTIONS:

Are the terms “responsible party” and “tank owner and/or operator” interchangeable?

Which term should be used in letters, Notices of Violation, etc., issued by DUST?

SCOPE OF THIS DISCUSSION

The part of the discussion concerning which term to use in letters, Notices of Violation, etc. does not apply to Director’s Orders or Commissioner’s Orders.

ANALYSIS & DISCUSSION

To begin this analysis, the usage as well as the definitions of the terms “responsible party” and “tank owner and/or operator” were examined. The applicable definitions from both the federal regulations and the state law are cited in this Statutory/Regulatory Interpretive Memorandum. As can be seen by referring to the definitions on pages 3 through 5 of this memorandum, the terms are not the same. They have different meanings. The term “responsible party” includes persons not encompassed by the definitions of the terms “owner” and “operator”. The term “responsible party” includes the property owner. Neither the term “owner” nor the term “operator” include a property owner who does not own or operate tanks. Therefore, since the terms do not have the same meaning, the terms are not interchangeable.

As for usage, the term “responsible party” is not used in the federal underground storage tank regulations. This term is found in the Tennessee UST Act. The usage of the term “responsible party” is primarily in the context of the issuance of a Commissioner’s Order for addressing petroleum contamination at a petroleum site (see T.C.A. § 68-215-107(b) and 116).

The usage of the term “owner and/or operator” in the UST Act is broader in scope. The term is used in the context of notification requirements, annual fee payment requirements, financial responsibility and fund eligibility requirements.

The difference in usage of the terms in the Tennessee regulations needs to be looked at from the perspective of historical usage, current usage and potential usage in the future (draft rule changes). The earliest versions of the TN UST regulations did not use the term “responsible party”. All regulatory requirements were originally directed at owners and/or operators. It was not until 1996 that any of the UST regulations included the term “responsible party”. The term was first used when rule 1200-1-15-.06(6) (which corresponds to the current rule 1200-1-15-.06(5)) was amended in 1996 to include limited site evaluations and the monitoring only program. The current regulations use the term “responsible party” fewer than 25 times. The researcher into this matter stopped counting the term “owner and/or operator” at around 140 occurrences without counting all the occurrences in rules 1200-1-15-.08 through .12. In other words, usage of the term “responsible party” is very limited in the current regulations while usage of the term “owner and/or operator” abounds.

The draft rule changes contemplate decreasing the usage of the term “responsible party” in the regulations and increasing the utilization of the term “owner and/or operator”, closely mirroring the usage in the original version of the TN UST regulations.

One rationale for using the term “owner and/or operator” in TN regulations is the usage of that term exclusively throughout the federal UST regulations. Another rationale is the lack of statutory authority to place requirements on the “responsible party” without the issuance of a Commissioner’s Order.

The term “owner and/or operator” should be used in letters, Notices of Violation, etc. issued by DUST. This determination is based upon the following factors:

1. There is stronger statutory authorization for using the term “owner and/or operator”.
2. The statute places restraints upon the commissioner (the department and/or the division) concerning the types of actions the commissioner (the department and/or the division) may take against a “responsible party”, i.e., most actions require the issuance of a Commissioner’s Order.
3. The applicability statement in both the state and the federal regulations states that the regulations apply to owner and operators of UST systems.
4. The TN UST regulations primarily use the term “owner and/or operator”.
5. The federal UST regulations use the terms “owner” and “operator” throughout.

CONCLUSIONS

The terms “owner and/or operator” and “responsible party” are not interchangeable.

The term “owner and/or operator” should be used in letters, Notices of Violation, etc. issued by DUST.

APPLICABLE STATUTORY LANGUAGE

From The

TENNESSEE PETROLEUM UNDERGROUND STORAGE TANK ACT

68-215-103. Definitions. --- As used in this chapter, unless the context otherwise requires:

- (8) "Operator" means any person in control of, or having responsibility for, the daily operation of the petroleum underground storage tank;
- (9) "Owner" means:
 - (A) For petroleum storage tanks in use or brought into use on or after November 8, 1984, any person who owns a petroleum underground storage tank used for the storage, use, or dispensing of petroleum products;
 - (B) For petroleum underground storage tanks used prior to November 8, 1984, but no longer in use after that date, the person who last owned the petroleum underground storage tank used for storage, use, or dispensing of petroleum immediately before discontinuation of its use;
- (16) "Responsible party" means:
 - (A) The owner and/or operator of a petroleum site;
 - (B) Any person who at the time of the release which caused the contamination was an owner and/or operator of a petroleum underground storage tank; or
 - (C) A responsible party does not include a unit of state or local government which becomes an owner or operator of a petroleum site by acquiring ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless such governmental entity has otherwise owned or operated a petroleum underground storage tank on the site or has caused or contributed to the release or threatened release from such a tank;

68-215-107. Supervision, inspection, and enforcement responsibilities

- (b) The commissioner is authorized to issue an order to any responsible party requiring such party to investigate, identify, contain and clean up, including monitoring and maintenance, any petroleum substance sites which pose or may pose a danger to public health, safety, or the environment because of release or threatened release of petroleum substances. Any person failing, neglecting or refusing to comply with any final order after a hearing shall be subject to the penalties provided in this chapter.
- (c) In the event that any identified responsible party or parties are unable or unwilling to provide for the investigation, identification, or for the reasonable and safe containment and cleanup, including monitoring and maintenance, pursuant to an order issued under this section, or no such liable party can reasonably be identified by the commissioner, the commissioner may provide for such actions.

68-215-116. Failure to take proper action. --- Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the fund as a result of such failure to take proper action. The commissioner may recover this penalty in an action commenced under § 68-215-115 or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter. Any penalty awarded pursuant to this section shall be deposited into the fund.

APPLICABLE FEDERAL REGULATIONS

40 CFR 280.10 Applicability

- (a) The requirements of this part¹ apply to all owners and operators of an UST system as defined in 280.12 except as otherwise provided...

40 CFR 280.12 Definitions

“Operator” means any person in control of, or having responsibility for, the daily operation of the UST system.

“Owner” means:

- (a) In the case of an UST system in use on November 8, 1984, but no longer in use on that date, any person who owns an UST system used for storage, use or dispensing of regulated substances; and
- (b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST system immediately before discontinuation of its use.

APPLICABLE TENNESSEE PETROLEUM UNDERGROUND STORAGE TANK REGULATIONS

1200-1-15-.01(1) Applicability.

- (a) The requirements of this chapter² apply to all owners and operators of an UST system as defined in rule 1200-1-15-.01(3) except as otherwise provided in subparagraph (b) and (c) of rule 1200-1-15-.01(1).

¹ “Part” means Part 280 – Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST).

² The “Chapter” is all of 1200-1-15. That includes rule 1200-1-15-.01 through rule 1200-1-15-.12.